

September 24, 2004

## **OIL AND GAS ISSUES IN AND ADJACENT TO THE UPPER MISSOURI RIVER BREAKS NATIONAL MONUMENT**

### **PURPOSE OF THE BRIEFING DOCUMENT:**

BLM will prepare a new analysis of 12 oil and gas leases within the Upper Missouri River Breaks National Monument that were issued under the 1988 West HiLine RMP.

In 2000, the Montana Wilderness Association (MWA) filed suit challenging BLM's issuance of three leases and a pipeline right-of-way to Macum Energy. The MWA alleged that both actions violated the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), National Historic Preservation Act (NHPA), Federal Land Policy and Management Act (FLPMA), and Wild and Scenic Rivers Act (WSRA). The leases and pipeline are located inside and outside of the boundary of the Upper Missouri River Breaks National Monument. The three leases were issued effective November 1, 1999. The original complaint included seven leases, but MWA amended the complaint to include only three, narrowing the focus to include only leases in the Bullwacker area.

On March 31, 2004, Judge Donald Molloy of the Montana Federal District Court ruled in favor of the Plaintiffs.

A decision on what to do about the ruling was delayed until a July 8, 2004, court hearing where it was hoped the court would provide clarification. However, at the July 8 hearing the judge indicated that he was dissatisfied with the progress of both parties to the lawsuit and that a full hearing would be rescheduled.

### **ISSUES:**

Judge's Order:

1. The BLM shall prepare an environmental impact statement (EIS) for the oil and gas leasing program that covers the three leases.
2. The BLM shall prepare an environmental assessment for the 1999 pipeline right-of-way.
3. The BLM shall prepare a valid biological assessment of the oil and gas leasing program in conjunction with the EIS process.
4. The BLM shall consult with all required entities, including nearby tribes, as required by the NHPA. Macum Energy, Inc. shall shut down the pipeline pending a decision on permanent injunctive relief. (Without objection from the plaintiff, Macum was subsequently given approval for continued use of the pipeline.)

Within the Upper Missouri River Breaks National Monument area, some 350 wells have been drilled since 1950, and 56 have produced at least some gas. With the combination of rough topography, scattered development, 320 and 640-acre spacing, limited roads, and remote location, the area has retained its characteristics of outstanding rugged beauty even with the existing gas production. Rising natural gas prices and improved drilling and completion techniques have made this area more attractive to industry recently.

### **MAIN DECISION OR MESSAGE:**

BLM wants to address the court's concerns as quickly, completely and efficiently as possible, and has determined that the best means of addressing those concerns is to include the oil and gas lease analysis in the ongoing Upper Missouri River Breaks National Monument Resource Management Plan. As a result, the originally scheduled release of the draft plan in the summer of 2004 did not occur. Best estimates are that the draft will be delayed 9-12 months. Concurrently, BLM is completing the needed work to address all other points in the judge's ruling.

Leases issued under the West HiLine RMP that are outside the monument will be addressed in a previously planned, new West HiLine RMP scheduled to begin in 2010. There may be an opportunity to combine the North Headwaters (scheduled to start in 2005) with the new West HiLine, but even if combined, realistically we are still looking at a date in 2007 to resolve affected leasing issues outside the monument. There may be other options to deal with NEPA concerns outside the monument.

**BUREAU PERSPECTIVE:**

In light of Judge Molloy's ruling, all leases based on the West HiLine Resource Management Plan (RMP) could be in jeopardy and could be challenged at any time. Preparation of the Draft RMP/Draft EIS had been ongoing while waiting for the July 8, 2004, hearing. However, with the serious potential implication as a result of the court ruling for the oil and gas program nationally, as well as within Montana, the RMP schedule needed to be altered to include the issues raised by the suit.

Any activity within the monument can be expected to have a high level of public interest. While natural gas production and development are among the historic uses of this area, the MWA is concerned about drilling, and other environmental groups/individuals share MWA's position at least to some extent. Local residents and surrounding county governments generally support continued gas development in this area.

**CONTACT:** Don Judice Field Station Supervisor 406 791-7789